

810-3-136-.02 Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit. **(NEW RULE)**

(1) The Owner of a Project that has been issued a Tax Credit Certificate shall forward a copy of the Tax Credit Certificate to the Department within 30 days from the date of issuance. If there is more than one Owner of the Project, or if the Owner is a pass-through entity, an Allocation Schedule must be filed with the Tax Credit Certificate. Projects that have been issued more than one Tax Credit Certificate will combine the credits awarded and file only one Allocation Schedule with the Department. In keeping with taxpayer confidentiality, the Allocation Schedule shall only be filed with the Department and should not be filed with any taxpayer's tax return.

(2) Credits may only be claimed by taxpayers holding a Tax Credit Certificate, a Transfer Tax Credit Certificate, or a Recipient Tax Credit Certificate and by filing a copy of such certificate with the taxpayer's tax return. If the tax credit is passed through by a pass-through entity holding a Tax Credit Certificate or Transfer Tax Credit Certificate, the pass-through entity must issue a Recipient Tax Credit Certificate to each member or partner receiving a tax credit in accordance with the Allocation Schedule and such certificate shall also be filed with the taxpayer's tax return.

(3) A taxpayer may apply the entire tax credit against the state portion of any tax imposed by Chapters 16 or 18 for the taxable year in which the certified rehabilitation is placed in service. Since the tax imposed by Chapter 16 includes taxes that are distributed to the municipalities and counties within Alabama, in addition to the tax that is retained by the state; the credit is only available to offset that portion that is retained by the state. The state portion of any tax imposed with regard to Chapter 16 means, for purposes of this rule, the portion of the tax to be distributed to the state's general fund. Forms and instructions will be made available to taxpayers to provide guidance on how to compute this credit for those taxpayers subject to tax under Chapter 16.

(4) Any unused portion of the taxpayer's credit cannot be refunded, but may be carried forward for up to 10 additional years from the year in which the certified rehabilitation Project is placed in service.

(5) On or after the date the Tax Credit Certificate is issued to the Project, any partner, member, or Owner of the Project may transfer all or part of their credit. Once a credit is transferred, only the Transferee or Transferees, or their partners or members, may utilize such credit and the credit cannot be transferred again.

(6) Prior to the effectiveness of a transfer, the Transferor shall file a Transfer Statement with the Department along with a copy of the draft or final Transfer Agreement(s), a copy of the Tax Credit Certificate and a \$1,000 fee for each Transferee listed on the Transfer Statement. If the Transferee is a pass-through entity, the Transferee must provide an Allocation Schedule with the Transfer Statement. Unless

previously filed, the Transferor shall also file a copy of the executed Transfer Agreement with the Department no later than 30 days after the agreement has been executed. The Department shall issue a Transfer Tax Credit Certificate to each Transferee for the amount listed on the Transfer Statement within 30 days after receipt of the executed Transfer Agreement. If the amount of the Transferee's tax credit listed in the agreement is different from the Transfer Statement originally filed with the Department, the Transferor shall submit an amended Transfer Statement with the executed agreement.

(7) The aggregate amount of the tax credit taken or utilized by all of the Owners, partners, members of a Project or Transferees cannot exceed the amount of credit awarded on the related Tax Credit Certificate or Transfer Tax Credit Certificate, as applicable.

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Authority: Section 40-2A-7(a)(5) and Title 40 Chapter 9F, Code of Alabama 1975

History: